

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

JAN KOPACZ and CATHY KOPACZ,	:	C.A. No. 04-911 GMS
	:	
Plaintiffs,	:	Jury Trial Demanded
	:	
v.	:	
	:	
DELAWARE RIVER AND BAY	:	
AUTHORITY, and CRAIG SWETT,	:	
	:	
Defendants.	:	
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JAN KOPACZ,	:	C.A. No. 04-1281 GMS
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
DELAWARE RIVER AND BAY	:	
AUTHORITY,	:	
	:	
Defendant.	:	
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**MOTION OF DEFENDANT, DELAWARE RIVER AND BAY AUTHORITY, FOR  
JUDGMENT AS A MATTER OF LAW UNDER FED.R.CIV.P. 50**

Defendant, Delaware River and Bay Authority ("DRBA"), respectfully requests judgment in its favor as a matter of law on the Plaintiffs' claims for unseaworthiness and the Jones Act. A motion for judgment as a matter of law must be granted when there is no "legally sufficient evidentiary basis" for a reasonable jury to find for that party with respect to the claim presented. Fed. R. Civ. P. 50(a).

Plaintiff, Jan Kopacz, has failed to establish that he was injured as a result of any negligence on the part of the DRBA. Likewise, no evidence has been presented that the

Defendant's vessel was not reasonably fit for the purpose for which it was intended to be used, in order to establish the claim of unseaworthiness. Mitchell v. Trawler Racer, Inc., 362 U.S. 539 (1960).

There is no evidence of any violations of Coast Guard or other maritime regulations by the DRBA. Even if Del. Code Title 21 § 4164 is found to be applicable to the facts of this case, by its plain terms, the conduct prescribed in the code is for the driver of a motor vehicle and not the DRBA's employees. No evidence has been presented by which any reasonable juror could rule that a warning sign was needed or required on the vehicle loading dock. Even taking the facts in the light most favorable to Jan Kopacz, to the extent that any accident took place, which is denied, it was not the fault of the DRBA. Mr. Kopacz claims he was injured on the ferry deck when a vehicle operated by Craig Swett backed into him. No evidence of any fault has been presented against DRBA. In fact, the Plaintiff agrees that the DRBA was not responsible for causing the alleged accident:

Q: Did you have any discussions with anyone at DRBA with respect to making a claim against DRBA?

A: No, I did not. Well, I had a discussion with them saying that I was not going to file a claim against them, and I felt they were not at fault, that it was the person who was driving the car.

(Notes of Testimony of Jan Kopacz, 2/8/06, p. 15, attached as Exhibit "A").

For all of the foregoing reasons, the DRBA respectfully requests judgment in its favor on the counts of unseaworthiness and the Jones Act.

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2006, I electronically filed with the Clerk of Court MOTION OF DEFENDANT, DELAWARE RIVER AND BAY AUTHORITY, FOR JUDGMENT AS A MATTER OF LAW UNDER FED.R.CIV.P. 50 using ECF, which will send notification of such filing to the following:

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